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6 Attorneys for Defendants,
ERICA L. BRACHFELD, A.P.C. and ERICA L.
7 BRACHFELD

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 CATHERINE BUI, an individual,
12 Plaintiff,

13 VS.

14 ERICA L. BRACHFELD, A
15 PROFESSIONAL
16 CORPORATION, a California
professional corporation;
17 Defendant.

CASE NO. CV 08-08297 SVW (FFMx)

DEFENDANT ERICA L.
BRACHFELD, A.P.C.'S ANSWER
TO COMPLAINT

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20 COMES NOW Defendant, ERICA L. BRACHFELD, A.P.C. ("Defendant"),
21 appearing itself and for no other person, firm or entity, files its Answer to the
22 Complaint of Plaintiff, CATHERINE BUI ("Plaintiff"), an individual, by admitting,
23 denying and alleging as follows:

24 1. Answering Paragraph 1 of the Complaint, Defendant admits that the
25 United States District Court generally has jurisdiction over claims arising under 15
26 U.S.C. § 1692, et seq., but denies that Plaintiff has any such claim herein.
27 Defendant also admits that generally venue would be proper if Plaintiff had a valid
28

1 claim, but denies that Plaintiff has any claim herein.

2 2. Answering Paragraph 2 of the Complaint, Defendant is without
3 knowledge or information sufficient to form a belief as to the truth of Plaintiff's
4 allegations, and, on that basis, denies each and every allegation contained therein.
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6 3. Answering Paragraph 3 of the Complaint, Defendant admits the
7 allegations therein.

8 4. Answering Paragraph 4 of the Complaint, Defendant is without
9 knowledge or information sufficient to form a belief as to the truth of Plaintiff's
10 allegations, and, on that basis, denies each and every allegation contained therein.
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12 5. Answering Paragraph 5 of the Complaint, Defendant is without
13 knowledge or information sufficient to form a belief as to the truth of Plaintiff's
14 allegations, and, on that basis, denies each and every allegation contained therein.
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16 6. Answering Paragraph 6 of the Complaint, Defendant denies that Erica
17 Lynn Brachfeld she is a debt collector under CA Civil Code Section 1788.2(c). As
18 for the remaining allegations, Defendant admits the remaining allegations therein

19 7. Answering Paragraph 7 of the Complaint, Defendant admits the
20 allegations therein.
21

22 8. Answering Paragraph 8 of the Complaint, Defendant admits that it
23 attempted to collect a debt from Plaintiff. As for the remaining allegations,
24 Defendant denies the remaining allegations therein.

25 9. Answering Paragraph 9 of the Complaint, Defendant admits that it
26 attempted to collect a debt from Plaintiff. As for the remaining allegations,
27 Defendant denies the remaining allegations therein.
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1 10. Answering Paragraph 10 of the Complaint, Defendant admits that it
2 attempted to collect a debt from Plaintiff. As for the remaining allegations,
3 Defendant denies the remaining allegations therein.

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5 11. Answering Paragraph 11 of the Complaint, Defendant admits that it
6 attempted to collect a debt from Plaintiff. As for the remaining allegations,
7 Defendant denies the remaining allegations therein.

8
9 12. Answering Paragraph 12 of the Complaint, Defendant admits that it
10 attempted to collect a debt from Plaintiff. As for the remaining allegations,
11 Defendant denies the remaining allegations therein.

12 13. Answering Paragraph 13 of the Complaint, Defendant hereby
13 incorporates all of the above paragraphs of this Answer as though fully stated
14 herein.

15 14. Answering Paragraph 14 of the Complaint, Defendant denies the
16 allegations therein.

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18 14a. Answering Paragraph 14a of the Complaint, Defendant denies the
19 allegations therein.

20 14b. Answering Paragraph 14b of the Complaint, Defendant denies the
21 allegations therein.

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23 14c. Answering Paragraph 14c of the Complaint, Defendant denies the
24 allegations therein.

25 14d. Answering Paragraph 14d of the Complaint, Defendant denies the
26 allegations therein.

27
28 14e. Answering Paragraph 14e of the Complaint, Defendant denies the

1 allegations therein.

2 14f. Answering Paragraph 14f of the Complaint, Defendant denies the
3 allegations therein.

4 14g. Answering Paragraph 14g of the Complaint, Defendant denies the
5 allegations therein.

6 15. Answering Paragraph 15 of the Complaint, Defendant denies the
7 allegations therein.

8 16. Answering Paragraph 16 of the Complaint, Defendant hereby
9 incorporates all of the above paragraphs of this Answer as though fully stated
10 herein.

11 17. Answering Paragraph 17 of the Complaint, Defendant denies the
12 allegations therein.

13 17a. Answering Paragraph 17a of the Complaint, Defendant denies the
14 allegations therein.

15 17b. Answering Paragraph 17b of the Complaint, Defendant denies the
16 allegations therein.

17 17c. Answering Paragraph 17c of the Complaint, Defendant denies the
18 allegations therein.

19 17d. Answering Paragraph 17d of the Complaint, Defendant denies the
20 allegations therein.

21 18. Answering Paragraph 17 of the Complaint, Defendant denies the
22 allegations therein

23 19. Answering Paragraph 19 of the Complaint, Defendant hereby

1 incorporates all of the above paragraphs of this Answer as though fully stated
2 herein.

3 20. Answering Paragraph 20 of the Complaint, Defendant denies the
4 allegations therein.
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6 21. Answering Paragraph 21 of the Complaint, Defendant denies the
7 allegations therein.

8 22. Answering Paragraph 22 of the Complaint, Defendant hereby
9 incorporates all of the above paragraphs of this Answer as though fully stated
10 herein.
11

12 23. Answering Paragraph 23 of the Complaint, Defendant denies the
13 allegations therein.

14 24. Answering Paragraph 24 of the Complaint, Defendant denies the
15 allegations therein.
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17 25. Answering Paragraph 25 of the Complaint, Defendant denies the
18 allegations therein.

19 26. Answering Paragraph 26 of the Complaint, Defendant hereby
20 incorporates all of the above paragraphs of this Answer as though fully stated
21 herein.
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23 27. Answering Paragraph 27 of the Complaint, Defendant denies the
24 allegations therein.

25 28. Answering Paragraph 28 of the Complaint, Defendant denies the
26 allegations therein.
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PRAYER

29. Answering Paragraph 1 of the Prayer, Defendant denies Plaintiff is entitled to the relief requested.

30. Answering Paragraph 2 of the Prayer, Defendant denies Plaintiff is entitled to the relief requested.

31. Answering Paragraph 3 of the Prayer, Defendant denies Plaintiff is entitled to the relief requested.

32. Answering Paragraph 4 of the Prayer, Defendant denies Plaintiff is entitled to the relief requested.

33. Answering Paragraph 5 of the Prayer, Defendant denies Plaintiff is entitled to the relief requested.

34. Answering Paragraph 6 of the Prayer, Defendant denies Plaintiff is entitled to the relief requested.

35. Answering Paragraph 7 of the Prayer, Defendant denies Plaintiff is entitled to the relief requested.

36. Answering Paragraph 8 of the Prayer, Defendant denies Plaintiff is entitled to any other relief.

FIRST AFFIRMATIVE DEFENSE

37. As a separate, affirmative defense, Defendant alleges that the Complaint, and each and every purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

38. As a separate, affirmative defense, Defendant alleges that the alleged

actions of defendants were proper and did not violate any provisions of 15 U.S.C. § 1692 et. seq.

THIRD AFFIRMATIVE DEFENSE

39. As a separate, affirmative defense, Defendant alleges that at all times mentioned in the Complaint, Defendant acted lawfully and within its legal rights, with a good faith belief in the exercise of that right, and in the furtherance of a legitimate business purpose. Further, Defendant acted in good faith in the honest belief that the acts, conduct and communications, if any, of the Defendant was justified under the circumstances based on information reasonably available to this answering Defendant.

FOURTH AFFIRMATIVE DEFENSE

40. As a separate, affirmative defense, Defendant alleges that the alleged actions of the Defendant were not accompanied by actual malice, intent or ill will.

FIFTH AFFIRMATIVE DEFENSE

41. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendant denies, then Plaintiff's damages are limited by California Civil Code Section 1788.30.

SIXTH AFFIRMATIVE DEFENSE

42. As a separate, affirmative defense, Defendant allege that Defendant's conduct, communications and actions, if any, were privileged.

SEVENTH AFFIRMATIVE DEFENSE

43. As a separate, affirmative defense, assuming arguendo that this Defendant violated a statute alleged in the Complaint, which presupposition the

1 Defendant denies, such violation was not intentional and resulted from a bona
2 fide error, notwithstanding the maintenance of procedures reasonably adapted to
3 avoid any such error.

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5 **EIGHTH AFFIRMATIVE DEFENSE**

6 44. As a separate, affirmative defense, Defendant alleges that the alleged
7 actions of Defendant was proper and did not violate any provisions of California
8 Civil Code Section 1788, et seq.

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10 **NINTH AFFIRMATIVE DEFENSE**

11 45. As a separate, affirmative defense, Defendant alleges that
12 Defendant's conduct, communications and actions, if any, were privileged
13 pursuant to 15 U.S.C. § 1692(k)c).

14
15 **TENTH AFFIRMATIVE DEFENSE**

16 46. As a separate, affirmative defense, Defendant alleges that if Plaintiff
17 was damaged in any sum or sums alleged, which Defendant denies, then
18 Plaintiff's damages are limited by 15 U.S.C. § 1692(k)(a)(1), § 1692(k)(a)(2)(A),
19 § 1692(k)(a)(3) and 15 U.S.C. § 1692(k)(b)(1).

20
21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 47. As a separate, affirmative defense, Defendant reserves the right to
23 allege and assert any additional and/or further affirmative defenses as become
24 apparent to Defendant during the course of this litigation.

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26 **TWELFTH AFFIRMATIVE DEFENSE**

27 48. Plaintiff's Complaint and each purported causes of action alleged
28 therein against Defendant fails to allege facts sufficient to constitute extreme or

1 outrageous conduct, and therefore fails to state a cause of action for emotional
2 distress.

3 WHEREFORE, this answering Defendant prays,

- 4
- 5 1. That Plaintiff take nothing by reason of her Complaint;
 - 6 2. For judgment in favor of Defendant, and against Plaintiff;
 - 7 3. For costs of suit and reasonable attorneys' fees incurred; and
 - 8 4. For such other and further relief as the Court may deem just and proper.
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11 DATED: March 4, 2009

CARLSON & MESSER LLP

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13 By /s/ David J. Kaminski
14 David J. Kaminski
15 Larissa G. Nefulda
16 Attorneys for Defendants,
17 ERICA L. BRACHFELD, A.P.C. and
18 ERICA L. BRACHFELD
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